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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

33M1/1009

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ART UNIT	PAPER NUMBER
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3308

DATE MAILED:

10/09/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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1. Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1,8,9,13, it is not clear to the examiner why applicant is claiming the dressing. The preamble calls for a therapeutic apparatus; however, the dressing is not part of the apparatus. The dressing is used to hold part of the apparatus in place (pad in the wound). For example in claim 9, the part that reads "a porous pad which is permeable to fluids **for** introduction into the wound and secured in the wound by a dressing" sets out the intended use of the apparatus as used in a wound. The dressing is also part of the intended use. If applicant desires to claim the combination of the dressing and the apparatus the preamble must be changed to reflect that it is the combination of the two that is being claimed. For purposes of examination the examiner has considered the dressing to be part of the intended use of the apparatus. Correction is required.

2. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

3. Claims 1-11,13, are rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz (WO 93/09736) in view of Martin (4,631,061).

With respect to claim 1,5,8, Kuntz discloses a pad 21, canister 35, tubing 33 that is attached by an interference fit, and pump 37. Kuntz does not disclose a filter between the canister and the pump. Martin discloses a portable fluid collection system that has a fluid trap 46, that prevents any collected fluid from getting to the vacuum pump, and possibly breaking the vacuum pump. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Kuntz with a filter (fluid trap) between the canister and the pump as disclosed by Martin so that

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destruction of the pump by fluid entering the pump can be prevented.

With respect to claim 2, Kuntz discloses the claimed invention except for the filter in the canister. It would have been an obvious matter of design choice to provide the system of Kuntz with the filter in the canister, since applicant has not disclosed that having the filter in the canister solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the filter in the fluid line between the canister and the pump.

With respect to claim 3, the canister of Kuntz is removably attached to the pump housing by tube 39.

With respect to claim 4, Kuntz does not disclose the canister as being held in a recess in a pump housing. Martin discloses a portable fluid collection system that has all of the components housed in a single portable carrier housing 72. See figure 4. The canister is housed in a recess in the housing 72. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the system of Kuntz portable as a single unit as disclosed by Martin in figure 4. This would result in a single portable unit that housed all the components of the system. The canister would then be housed in a recess in the housing.

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With respect to claims 6,7, there is no criticality for the type of pad. Kuntz discloses the claimed invention except for a polyether reticulated polymer foam pad. It would have been an obvious matter of design choice to make the pad a polymer foam pad, since applicant has not disclosed that this particular type of pad solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with another type of pad.

With respect to claim 9, Kuntz discloses a pad 21, canister 35, tubing 33 that is attached by an interference fit, and pump 37. Kuntz does not disclose a filter between the canister and the pump. Kuntz also does not disclose the canister as having a sensor to detect when the level of fluid in the canister is at full. Martin discloses a portable fluid collection system that has a fluid trap 46, that prevents any collected fluid from getting to the vacuum pump, and possibly breaking the vacuum pump. Martin also discloses a sensor 40 for the canister that senses when the canister is full of fluid and will turn off the pump if the level gets very full. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Kuntz with a filter (fluid trap) between the canister and the pump as disclosed by Martin so that destruction of the pump by fluid entering the pump can be prevented. It would have been obvious

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to one of ordinary skill in the art at the time the invention was made to provide the device of Kuntz with a sensor that senses when the canister is full of fluid as disclosed by Martin.

With respect to claim 10, Kuntz discloses the claimed invention except for a capacitance sensor. It would have been an obvious matter of design choice to make the sensor a capacitance sensor, since applicant has not disclosed that using this type of sensor solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the sensor used by Martin.

With respect to claim 11, the apparatus of Kuntz is adapted for continuous or intermittent operation in the sense that the device can be turned on and off to supply intermittent suction, or can be left on to apply continuous suction.

4. Claims 12,13 are rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz in view of Martin in view of Kurtz et al. (4,605,400). Kuntz discloses the invention substantially as claimed.

With respect to claim 13, Kuntz discloses a porous pad 21, canister 35, tubing 33 that is attached by an interference fit, and pump 37. The apparatus of Kuntz is adapted for continuous or intermittent operation in the sense that the device can be turned on and off to supply intermittent suction, or can be left on to apply continuous suction. Kuntz does not disclose: a polyether

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reticulated polymer foam pad, a filter between the canister and the pump, the canister as having a capacitance sensor to detect when the level of fluid in the canister is at full, the device as having a bleed device to relieve excess negative pressure in the system, and the canister as being held in a recess in a pump housing.

Martin discloses a portable fluid collection system that has a fluid trap 46, that prevents any collected fluid from getting to the vacuum pump, and possibly breaking the vacuum pump. Martin also discloses a sensor 40 for the canister that senses when the canister is full of fluid and will turn off the pump if the level gets very full. Martin discloses a portable fluid collection system that has all of the components housed in a single portable carrier housing 72. See figure 4. The canister is housed in a recess in the housing 72.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Kuntz with a filter (fluid trap) between the canister and the pump as disclosed by Martin so that destruction of the pump by fluid entering the pump can be prevented. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Kuntz with a sensor that senses when the canister is full of fluid as disclosed by Martin. It would have been an obvious matter of design choice to

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make the sensor a capacitance sensor, since applicant has not disclosed that using this type of sensor solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the sensor used by Martin. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the system of Kuntz portable as a single unit as disclosed by Martin in figure 4. This would result in a single portable unit that housed all the components of the system. The canister would then be housed in a recess in the housing. It would have been an obvious matter of design choice to make the pad a polymer foam pad, since applicant has not disclosed that this particular type of pad solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with another type of pad.

With respect to claims 12,13, Kuntz does not disclose the device as having a bleed device to relieve excess negative pressure in the system. Kurtz et al. discloses a suction drainage apparatus that has a negative pressure relief valve 130 that is used to relieve any excess negative pressures that occur in operation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Kuntz with a negative pressure relief valve as

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disclosed by Kurtz et al. so that any excess negative pressure in the system can be relieved.

5. Claim 14 is rejected under 35 U.S.C. § 103 as being unpatentable over Nichols (4,460,361) in view of Holbrook (3,804,090). Nichols discloses a container 14, inlet 40, outlet 18, and filter (see col. 3, lines 36-42). The examiner considers the deflector to be the portion of 40 that is protruding into the interior of container 14. Nichols does not disclose the container as having an anti-foaming substance in the container. Holbrook discloses a device that allows the addition of a foam reducing substance into a vacuum fluid collection system. Holbrook discloses that when collecting blood and other body fluids, the fluids may form a foam that will prevent accurate reading of the amount of collected fluid as well as possibly contaminating the vacuum pump with the foam. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the fluid collection system of Nichols with an anti-foaming substance as disclosed by Holbrook to help reduce the foaming of collected fluids so that accurate readings of the amount of fluid collected can be done, as well as preventing possible contamination of the vacuum pump.

6. Claim 15 is rejected under 35 U.S.C. § 103 as being unpatentable over Nichols in view of Holbrook as applied to claim 14 above, and further in view of Bryant et al.. Nichols

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discloses the invention substantially as claimed. Nichols does not disclose the container as having a gel forming substance that immobilizes collected fluid. Bryant discloses a suction system that has a waste treating material added into the container that includes a germicide and an absorbent powder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Nichols with a waste treating material as disclosed by Bryant, so that the collected fluids can be treated with a germicidal agent as well as a powder absorbent to help immobilize collected fluids.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262. The examiner can normally be reached Monday-Friday from 8am to 5pm.

The examiner's supervisor is John Weiss.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-308-0858.

Dennis Ruhl DR
Assistant Examiner
September 29, 1996


JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
GROUP 3300